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ON PETITION

In re Application of
Miller
Application No. 09/597,917
Filed: June 19, 2000
Attorney Docket No. 14410US01
For: MODULAR, PORTABLE DATA
PROCESSING TERMINAL FOR USE IN A
RADIO FREQUENCY COMMUNICATION
NETWORK

This is a decision on the petition under 37 CFR 1.137(a), filed October 9, 2006, requesting revival of the above-identified application. The petition will be treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

As a preliminary matter, the correspondence address of record has been corrected to the above-identified address.

This application was held abandoned for failure to respond in a timely and proper manner to the Notice of Allowance and Fee(s) Due, mailed February 26, 2002, which set forth a non-extendable three (3) month period for reply. The Office contended that this application became abandoned on May 27, 2002. A Notice of Abandonment was mailed on March 20, 2006.

Petitioner asserts a Request for Continued Examination (RCE), an IDS, and a Deletion of Inventors Request were timely filed on May 28, 2002. It is noted that the last possible date to timely reply was May 28, 2002, as May 26, 2002 fell on a Sunday and May 27, 2002 was a federal holiday.

The official application file does not contain a RCE. However, an IDS with certificate of mailing date of May 28, 2002 and a Rule 48 request are present. These documents were entered into Office databases with a receipt date of June 3, 2002. In addition, a RCE fee and an IDS fee was charged on June 4, 2002. The official application file does not contain a RCE.

However, the copy of the purportedly earlier filed RCE submitted with the instant petition contains a proper certificate of mailing bearing a May 28, 2002 date of deposit.


Under 37 CFR 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 CFR 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 CFR 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The RCE bears a proper certificate of mailing, dated May 28, 2002, in compliance with the requirements of 37 CFR 1.8(a)(1) as set forth above. In addition, the person signing the certificate, Attorney John H. Sherman, had reasonable basis to expect that the correspondence would be mailed on May 28, 2002.

The petition under 37 CFR 1.181 is **granted**, the holding of abandonment is withdrawn, and the March 20, 2006 Notice of Abandonment is **vacated**. No petition fee has been or will be charged in connection with this matter.

Accordingly, the application file will be forwarded to Technology Center A.U. 2876 for further processing of the RCE filed on certificate of mailing date May 28, 2002 and resubmitted on October 9, 2006.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.


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